

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, ex rel. )  
W.A. DREW EDMONDSON, in his )  
Capacity as ATTORNEY GENERAL OF )  
THE STATE OF OKLAHOMA and )  
OKLAHOMA SECRETARY OF THE )  
ENVIRONMENT C MILES TOLBERT, )  
in his capacity as the TRUSTEE FOR )  
NATURAL RESOURCES FOR THE )  
STATE OF OKLAHOMA, )

Plaintiffs )

v. )

Case No. 4:05-cv-00329-TCK-SAJ

TYSON FOODS, INC., )  
TYSON POULTRY, INC., )  
TYSON CHICKEN, INC., )  
COBB-VANTRESS, INC., )  
AVIAGEN, INC., )  
CAL-MAINE FOODS, INC., )  
CAL-MAINE FARMS, INC., )  
CARGILL, INC., )  
CARGILL TURKEY PRODUCTION, LLC, )  
GEORGE'S, INC., )  
GEORGE'S FARMS, INC., )  
PETERSON FARMS, INC., )  
SIMMONS FOODS, INC., )  
WILLOW BROOK FOODS, INC., )

Defendants )

**SIMMONS FOODS, INC.'S RESPONSES TO JULY 10, 2006 REQUESTS FOR  
PRODUCTION OF DOCUMENTS PROPOUNDED BY PLAINTIFFS**

Comes now the Defendant, Simmons Foods, Inc. ("Simmons"), and for its Responses to  
the July 10, 2006 Requests for Production of Documents Propounded by Plaintiffs, states:

RECEIVED

SEP 14 2006

RIGGS, ABNEY,  
NEAL, TURPEN,  
ORDON & LEWIS, INC.

**GENERAL OBJECTIONS**

PLAINTIFF'S  
EXHIBIT

A

any statement concerning Lake Tenkiller, the Illinois River, poultry, poultry litter, any a large number of other topics. Subject to the foregoing objection, to the extent Simmons has any documents containing public statements made specifically with regard to this lawsuit, such documents will be produced for inspection and copying at the offices of Simmons' attorneys at a mutually agreeable date and time.

**Request for Production No. 105:** Please produce all documents and materials reflecting, referring to or relating to the nature or character of the legal relationship between you and your contract growers.

**Answer:** Simmons objects to this request on the grounds that it is overly broad, unduly burdensome and vague. Subject to the foregoing objections, Simmons has already agreed, in response to a previous request for production, to provide copies of contracts with contract growers in the IRW.

**Request for Production No. 106:** Please produce all documents and materials reflecting, referring to or relating to any legal disputes or lawsuits regarding the nature or character of the legal relationship between you and your contract growers.

**Answer:** Simmons is not aware of any responsive documents.

**Request for Production No. 107:** Please produce all documents and materials reflecting, referring to or relating to your net worth.

**Answer:** Simmons objects to this request for production on the grounds that it seeks information which is not relevant to any issue in the lawsuit. Further, Simmons objects on the grounds that it seeks confidential business information. Simmons is not a public company, but instead is a closely held family corporation. As such, its financial records are private and confidential.


you or poultry growers under contract with you that pertain to actual or alleged run-off or discharge of poultry waste / poultry litter / poultry manure.

**Answer:** Simmons objects to this request because it is not limited to activity within the IRW. Subject to that objection, Simmons is not aware of any responsive documents for growers located in the IRW.

**Request for Production No. 125:** Please produce all documents and materials reflecting, referring to or relating to the destruction of any documents and materials that would have been responsive to any of the above requests for production but due to their destruction are no longer in existence.

**Answer:** Simmons has already produced a copy of its document retention policy.

SIMMONS FOODS, INC.,

By:   
John R. Elrod.  
Vicki Bronson, OK Bar Number 20574  
CONNER & WINTERS, LLP  
211 East Dickson Street  
Fayetteville, AR 72701  
(479) 582-5711  
(479) 587-1426 (facsimile)

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, et al.	)	
	)	
Plaintiffs	)	
	)	
v.	)	Case No. 4:05-cv-00329-GKF-SAJ
	)	
TYSON FOODS, INC., et al	)	
	)	
Defendants	)	

**SIMMONS FOODS, INC.'S APRIL 2, 2007 SUPPLEMENTAL RESPONSES TO  
PLAINTIFFS JULY 10, 2006 REQUESTS FOR PRODUCTION OF DOCUMENTS**

Comes now the Defendant, Simmons Foods, Inc. ("Simmons"), and submits the following Supplemental Responses to Plaintiffs July 10, 2006 Requests for Production of Documents:

**GENERAL OBJECTIONS**

1. Simmons objects to Plaintiffs' Instructions and Definitions to the extent they seek to include "agents" and "Contract Growers" in the definition of Simmons and the definition of "you" and "yours". Simmons further objects to and does not agree that it has any obligation or the ability to produce documents from any person or entity other than Simmons.
2. Simmons objects to Plaintiffs' Instructions and Definitions to the extent they exceed the scope of and duties under the Federal Rules of Civil Procedure.
3. Simmons objects to Plaintiffs' Instructions and Definitions and these Requests for Production to the extent they seek documents related to activities which occur outside the IRW. No documents will be provided related to Simmons' activities which occur



**Request for Production No. 104:** Please produce all documents and materials reflecting, referring to or relating to any internal statements, speeches, releases or communications you have made regarding this lawsuit or the subject matter of this lawsuit.

**Answer:** Simmons does not have any responsive non-privileged documents.

**Request for Production No. 105:** Please produce all documents and materials reflecting, referring to or relating to the nature or character of the legal relationship between you and your contract growers.

**Answer:** Responsive documents have been produced.

**Request for Production No. 106:** Please produce all documents and materials reflecting, referring to or relating to any legal disputes or lawsuits regarding the nature or character of the legal relationship between you and your contract growers.

**Answer:** Simmons is not aware of any documents responsive to this request other than legal documents filed in the case styled *City of Tulsa v. Tyson et al* and certain cases filed in the Circuit Court of Washington County, Arkansas. Simmons does not have any of those documents in its files but they are a matter of public record and easily attainable by Plaintiffs. Cases filed in the Circuit Court of Washington County, Arkansas, include *Green et al v. Alpharma, Inc. et al*, Case No. CIV 03-2150; *Beal et al v. Alpharma, Inc. et al*, Case No. CIV 04-194; *Bible et al v. Alpharma, Inc. et al*. Case No. CIV 04-193; *Carroll et al v. Alpharma, Inc. et al*, Case No. CIV 04-204; *McConnell et al v. Alpharma, Inc., et al*, Case No. CIV 04-203; *McWhorter v. Alpharma, Inc. et al*, Case No. CIV 04-195; *Belew et al v. Alpharma et al*. CIV 05-1932; *Gonzalez v. Alpharma, Inc. et al*, Case No. CIV 05-1933.

**Request for Production No. 107:** Please produce all documents and materials reflecting, referring to or relating to your net worth.

**Answer:** Simmons objects to this request for production on the grounds that it seeks information which is not relevant to any issue in the lawsuit. Further Simmons objects to this Request on the grounds that it seeks confidential business information. Simmons is a privately owned family corporation; its financial records are not subject to public disclosure.

**Request for Production No. 108:** Please produce copies of any charts, diagrams or schematics reflecting your present and / or past corporate structure and relationship to any corporate affiliates.

**Answer:** Responsive documents will be provided to Plaintiffs.

**Request for Production No. 109:** Please produce copies of any charts, diagrams or schematics reflecting the present and / or past management or organizational structures for those portions of your business relating, directly or indirectly, to poultry growing, as well as any charts, diagrams or schematics reflecting the personnel / employees holding positions within those structures.

**Answer:** See response to Request No. 108.

**Request for Production No. 110:** Please produce copies of any charts, diagrams or schematics reflecting the present and / or past management or organizational structures for those portions of your business relating, directly or indirectly, to environmental issues, as well as any charts, diagrams or schematics reflecting the personnel / employees holding positions within those structures.

**Answer:** Simmons does not have any such documents.

**Request for Production No. 111:** Please produce all documents and materials supporting or underlying the allegations made in paragraph 3 of the Third Party Complaint [DKT. #80].

**Answer:** No responsive documents.

**Request for Production No. 125:** Please produce all documents and materials reflecting, referring to or relating to the destruction of any documents and materials that would have been responsive to any of the above requests for production but due to their destruction are no longer in existence.

**Answer:** None.

SIMMONS FOODS, INC.,  
Defendant

By: /s/ Vicki Bronson  
John R. Elrod  
Vicki Bronson, OK Bar Number 20574  
CONNER & WINTERS, LLP  
211 East Dickson Street  
Fayetteville, AR 72701  
(479) 582-5711  
(479) 587-1426 (facsimile)

**CERTIFICATE OF SERVICE**

I hereby certify that on April 2, 2007, I electronically transmitted the foregoing document to the following ECF registrants:

Douglas Allen Wilson  
Melvin David Riggs  
Richard T. Garren  
Sharon K. Weaver  
Riggs Abney Neal Turpen Orbison  
& Lewis  
502 W. 6<sup>th</sup> St.  
Tulsa, OK 74119-1010  
**Counsel for Plaintiffs**

Robert Allen Nance  
Dorothy Sharon Gentry  
Riggs Abney  
5801 N. Broadway  
Suite 101

David Phillip Page  
James Randall Miller  
Louis Werner Bullock  
Miller Keffer & Bullock  
222 S. Kenosha  
Tulsa, OK 74120-2421  
**Counsel for Plaintiffs**

W.A. Drew Edmondson  
Attorney General  
Kelly Hunter Burch  
J. Trevor Hammons  
Robert D. Singletary  
Assistant Attorneys General  
State of Oklahoma

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA, *et al.*

Plaintiffs

v.

TYSON FOODS, INC., *et al.*

Defendants

Case No. 4:05-cv-00329-GKF-SAJ

---

**SIMMONS FOODS, INC.'S ANSWERS TO PLAINTIFFS'**  
**SEPTEMBER 13, 2007 SET OF INTERROGATORIES AND RESPONSES TO**  
**REQUESTS FOR PRODUCTION**

Comes now the Separate Defendant, Simmons Foods, Inc. ("Simmons"), and for its Answers to Plaintiffs' September 13, 2007 Set of Interrogatories and Responses to Requests for Production, states and alleges as follows:

**INTERROGATORY NO. 1:** Do you contend that since 1980 no poultry waste (including any constituents thereof) that was generated at your own poultry growing / feeding operations and /or poultry growing/feeding operations under contract with you and that was applied to land within the Illinois River Watershed has run-off/been released/been discharged , directly or indirectly, to the Waters of the State in the Illinois River Watershed? If you do not so contend, please describe the specificity (a) the constituents that have run-off/been released/been discharged, (b) when and how you first became aware that such constituents were running off/being released/being discharged, (c) the parcels of land from which such run-off/releases/discharges have occurred, (d) any efforts by you to quantify the amount of the constituents that have run-off/been released/have been discharged and the results of those efforts,

RECEIVED

NOV 15 2007

F. J. TURPEN,  
NEAL, TURPEN,  
ORBISON & LEWIS, P.C.

PLAINTIFF'S  
EXHIBIT

C



discovery purposes is five years. Thus, Simmons' response is limited to the past 5 years. Simmons' response is "none."

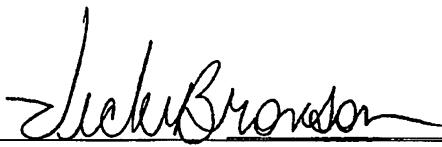
**REQUEST FOR PRODUCTION NO. 11:** To the extent you have not already produced them, please produce copies of documents reflecting your financial statements for fiscal years 2002 to the present, as well as any other documents reflecting your net worth for fiscal years 2002 to the present. For purposes of this request for production, the term "financial statement" includes, but is not necessarily limited to, balance sheets, statements of income, statements of equity position, statements of cash flow, and all footnotes.

**RESPONSE:** Simmons objects to Request for Production No. 11 on the grounds that it seeks information that is not relevant and instead is intended to harass and oppress. Simmons is a privately owned, closely-held family corporation and considers its financial records to confidential. Simmons further objects to this Request for Production because it is duplicative of Request No. 107 of Plaintiff's July 10, 2006 Requests for Production.

**REQUEST FOR PRODUCTION NO. 12:** To the extent you have not already produced them, please produce copies of all documents referring or relating to poultry waste generated at your own poultry growing/feeding/operations and/or poultry growing/feeding operations under contract with you in the Illinois River Watershed that has been transported out of the Illinois River Watershed (including but not limited to documents referring or relating to the identity of each operation that generated the poultry waste, the amounts of poultry waste that were transported out, where the poultry waste was transported to, who transported the poultry waste out, and who paid for the transport out).

**RESPONSE:** See Answer to Interrogatory No. 5.

SIMMONS FOODS, INC.,

By: 

John R. Elrod  
Vicki Bronson, OK Bar Number 20574  
CONNER & WINTERS, LLP  
211 East Dickson Street  
Fayetteville, AR 72701  
(479) 582-5711  
(479) 587-1426 (facsimile)

**CERTIFICATE OF SERVICE**

I hereby certify that on the 12th day of November, 2007, I mailed a copy of the foregoing document to at least one of the lawyers listed for each law firm:

Douglas Allen Wilson  
Melvin David Riggs  
Richard T. Garren  
Sharon K. Weaver  
Riggs Abney Neal Turpen Orbison  
& Lewis  
502 W. 6<sup>th</sup> St.  
Tulsa, OK 74119-1010  
**Counsel for Plaintiffs**

Robert Allen Nance  
Dorothy Sharon Gentry  
Riggs Abney  
5801 N. Broadway  
Suite 101  
Oklahoma City, OK 73118  
**Counsel for Plaintiffs**

William H. Narwold  
Motley Rice LLC  
20 Church St., 17<sup>th</sup> Floor  
Hartford, CT 06103  
**Counsel for Plaintiffs**

Robert W. George  
Michael R. Bond  
Erin W. Thompson

Louis Werner Bullock  
Miller Keffer Bullock Pedigo, LLC  
110 West 7<sup>th</sup> Street Suite 707  
Tulsa, OK 74119-1031  
**Counsel for Plaintiffs**

James Randall Miller  
Miller Keffer Bullock Pedigo, LLC  
222 S. Kenosha  
Tulsa, OK 74120  
**Counsel for Plaintiffs**

David Phillip Page  
Bell Legal Group  
222 S. Kenosha  
Tulsa, OK 74120  
**Counsel for Plaintiffs**

W.A. Drew Edmondson  
Attorney General  
Kelly Hunter Burch  
J. Trevor Hammons  
Tina L. Izadi  
Fidelma L. Fitzpatrick  
Assistant Attorneys General  
State of Oklahoma  
313 N.E. 21<sup>st</sup> St.



Elizabeth C. Ward  
 Licensed in NC, SC  
 DIRECT DIAL 843.216.9280  
 DIRECT FAX 843.216.9440  
 LWard@motleyrice.com

October 24, 2008

**Via Email**

John Elrod, Esq.  
 Conner & Winters, PLLC  
 211 E. Dickson St.  
 Fayetteville, AR 72701

Re: State of Oklahoma, et al. v. Tyson et. al.  
 Civil Action Number: 05-CV-0329-GKF-SAJ

Dear John

I write to address Simmons Foods, Inc.'s responses to the States July 10, 2006 (No. 107) and September 13, 2006 (No. 11) Requests for Production of Documents. While Simmons Foods, Inc. has objected to producing the requested financial information, it is clearly discoverable. See, e.g., Cardtoons, L.C.V. Major League Baseball Players Assn., 199 F.R.D. 677 (N.D. Okla 2001).

In order to expedite a resolution of this matter, the State is narrowing its requests for financial information as set forth below. For the purpose of these requests, unless otherwise indicated, the terms "year" or "year end" means the fiscal or calendar year depending on reporting year selected by Simmons Foods, Inc. The term "company" means Simmons Foods, Inc. Please provide the following:

1. Audited financial statements with all notes for years ending in calendar years 2003 through 2008.
2. Unaudited internal financial statements for most recent two year ends and most recent interim date. If audited statements are not available as requested above, please provide unaudited, reviewed and/or complied financial statements for years ending in calendar years 2003 through 2008.
3. Working trial balance at most recent year end and most recent interim financial reporting period.
4. Tax returns for 2006 and 2007, including all supporting schedules, disclosures, and detailed appreciation schedules.

www.motleyrice.com

Motley Rice LLC  
 Attorneys at Law



**MT. PLEASANT**

28 BRIDGESIDE BLVD.  
 P.O. BOX 1792  
 MT. PLEASANT, SC 29465  
 843-216-9000  
 843-216-9450 FAX

**PROVIDENCE**

321 SOUTH MAIN ST.  
 P.O. BOX 6067  
 PROVIDENCE, RI 02940  
 401-457-7700  
 401-457-7708 FAX

**HARTFORD**

ONE CORPORATE CENTER  
 20 CHURCH ST., 17TH FLOOR  
 HARTFORD, CT 06103  
 860-882-1681  
 860-882-1682 FAX

**PLAINTIFF'S  
 EXHIBIT**

D

John Elrod, Esq.  
October 24, 2008  
Page 2

5. Copy of any appraisal valuation or estimation of value prepared for or in connection with your business operations commencing in 2006, including the following:
  - assessment of tangible assets such as real property or equipment;
  - assessments of any stocks, securities, options, or other forms of securities issued by the company including but not limited to those documents utilized for financial reporting pursuant to Statement of Financial Accounting Statements ("SFAS") No. 123R and APB Opinion No. 25;
  - collateral or business enterprise assessments issued to any financial institutions;
  - assessments of cash flows employing discounting methods or other methods of valuing or estimating the fair value of long lived assets, business segments, trademarks or other intangibles including all documents prepared pursuant to the requirements of SFAS No. 159; and
  - assessments of closely held shares for use in gifting, transferring, or assigning such shares in the company.
6. Copies of business plans, financial projections, forecasts, and pro forma financial statements issued to any lending institutions, investment/capital group, investment banker, broker, merger, candidate, acquisition candidate, outside auditor, or any other party contemplating and/or consummating a significant financial transaction with the company since 2006.
7. Copies of internally prepared budgets and forecasts utilized by management for planning, managing, or monitoring the company's operating results since 2006.

I understand that there are confidentiality concerns with respect to some or all of these documents. I have already obtained a signed confidentiality acknowledgment by any company or individual to whom we will provide this information. Please provide the documents requested above by Friday, October 31, 2008. Alternatively, please provide me with a time prior to Friday, October 31, 2008 that we can meet and confer regarding this request.

Sincerely,



Elizabeth C. Ward

ECW:jmh

**Ward, Liza**

**From:** Xidis, Claire  
**Sent:** Monday, November 17, 2008 11:41 AM  
**To:** Vicki Bronson  
**Cc:** Ward, Liza  
**Subject:** RE: Okla v. Tyson Foods, et al  
**Attachments:** 2002-05-03 Order.pdf

Vicki - I don't know who spoke with, but we have not reached any agreement as limited as what you set forth below with any other privately held defendant. The other privately held defendants I have spoken with have agreed to provide financial information for the last 5 years that will provide information regarding assets, liabilities, and equities - in other words, enough information to create a full overview of the companies' financial condition and net worth. I don't know what information is included in Simmons' balance sheets, but if you could let me know, that would be helpful. In addition, the agreement I have reached thus far with other privately held parties has been that we will review this information from the last five years, and if it does not provide sufficient data to clearly understand the assets and liabilities and the overall financial condition of the company, we will revisit the other requests set forth in the Oct. 24th letter.

If you can produce financial information described above for the last five years before the Thanksgiving holiday, and agree that we can revisit the other requests in the letter if the documents you provide do not provide a clear overview of your client's financial condition, then we can reach an agreement on this.

Perhaps the attached order from the City of Tulsa case would be of interest to you - as this was referenced by the other private defendants that I have conferred with, it allowed the Plaintiff to discover 6 years of previous financial information and to revisit the issue if additional information was necessary.

Please feel free to give me a call if you want to discuss this further.

**Claire Xidis** | Attorney at Law | Motley Rice LLC  
 28 Bridgeside Blvd. | Mt. Pleasant, SC 29464 | [cxidis@motleyrice.com](mailto:cxidis@motleyrice.com)  
 o. 843.216.9251 | c. 843.834.4747 | f. 843.216.9450

**From:** Vicki Bronson [<mailto:vbronson@cwlaw.com>]  
**Sent:** Friday, November 14, 2008 2:34 PM  
**To:** Xidis, Claire  
**Subject:** Okla v. Tyson Foods, et al

Claire,

As we discussed in our meet and confer, it is our belief that applicable law only requires Simmons to produce documents which reflect its current net worth. The document that reflects its current net worth is a balance sheet. We will produce Simmons' most recent balance sheet and the ones for 2005 and 2006. It is my understanding that the State has agreed to accept similar documents from some of the other defendants that are privately held companies like Simmons.

Please let me know if this is acceptable to the state.

2/13/2009



Vicki Bronson  
Attorney at Law  
Conner & Winters, LLP  
211 E. Dickson St.  
Fayetteville, AR 72701  
(479) 582-5711  
(479) 587-1426 facsimile

IRS Circular 230 Notice: To ensure compliance with requirements imposed by the IRS, we inform you that, unless specifically indicated otherwise, any tax advice contained in this communication (including any attachment) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matter addressed herein.

*THIS MESSAGE AND ANY ATTACHMENTS MAY CONTAIN INFORMATION THAT IS HIGHLY CONFIDENTIAL, PRIVILEGED, AND EXEMPT FROM DISCLOSURE. ANY RECIPIENT OTHER THAN THE INTENDED RECIPIENT IS ADVISED THAT ANY DISSEMINATION, DISTRIBUTION, COPYING, OR OTHER USE OF THIS MESSAGE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS MESSAGE IN ERROR, PLEASE DESTROY IT AND NOTIFY THE SENDER IMMEDIATELY.*

2/13/2009

**Ward, Liza**

**From:** Xidis, Claire  
**Sent:** Wednesday, December 10, 2008 5:40 PM  
**To:** Vicki Bronson  
**Cc:** Ward, Liza  
**Subject:** RE: Oklahoma v. Tyson Foods, Inc. et al  
**Attachments:** 2002-05-03 Order.pdf

Vicki -

The balance sheets you produced on Monday are not complete financial statements and are missing key elements necessary to determine Simmons' financial condition. As I explained during our meet and confer a few weeks ago, we need financial information that set out income and that would enable us to get a complete understanding of Simmons' financial condition. Unfortunately, the balance sheets standing alone and do not provide key financial information.

I have attached the City of Tulsa order which addressed this issue for your review - please see p. 5-6. As you can see, it instructs the defendants to provide "financial statements." A financial statement includes a balance sheet, an income statement, and a statement of cash flow. These are the elements we need to understand the nature of Simmons' financial condition.

Also, two of the balance sheets you sent SIM AG 37107, 37109 state that "accompanying notes are an integral part of these combined financial statements." Please provide these notes which obviously impact the information set forth on the balance sheets.

Can you please provide this complete information for Simmons' as soon as possible?

Thank you,

**Claire Xidis** | Attorney at Law | Motley Rice LLC  
28 Bridgeside Blvd. | Mt. Pleasant, SC 29464 | [cxidis@motleyrice.com](mailto:cxidis@motleyrice.com)  
o. 843.216.9251 | c. 843.834.4747 | f. 843.216.9450

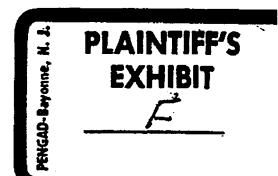
**From:** Vicki Bronson [<mailto:vbronson@cwlaw.com>]  
**Sent:** Monday, December 08, 2008 3:46 PM  
**To:** Xidis, Claire  
**Cc:** Vicki Bronson  
**Subject:** Oklahoma v. Tyson Foods, Inc. et al

Claire,

See attached letter and documents SIM AG 37106 through SIM AG 37110.

Vicki Bronson  
Attorney at Law  
Conner & Winters, LLP  
211 E. Dickson St.

2/13/2009



Fayetteville, AR 72701  
(479) 582-5711  
(479) 587-1426 facsimile

IRS Circular 230 Notice: To ensure compliance with requirements imposed by the IRS, we inform you that, unless specifically indicated otherwise, any tax advice contained in this communication (including any attachment) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matter addressed herein.

*THIS MESSAGE AND ANY ATTACHMENTS MAY CONTAIN INFORMATION THAT IS HIGHLY CONFIDENTIAL, PRIVILEGED, AND EXEMPT FROM DISCLOSURE. ANY RECIPIENT OTHER THAN THE INTENDED RECIPIENT IS ADVISED THAT ANY DISSEMINATION, DISTRIBUTION, COPYING, OR OTHER USE OF THIS MESSAGE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS MESSAGE IN ERROR, PLEASE DESTROY IT AND NOTIFY THE SENDER IMMEDIATELY.*

2/13/2009



**Ward, Liza**

**From:** Xidis, Claire  
**Sent:** Wednesday, January 14, 2009 11:04 AM  
**To:** 'Vicki Bronson'  
**Cc:** Ward, Liza  
**Subject:** RE: Oklahoma v. Tyson Foods, Inc. et al

Vicki -

I am writing in regard to my email message to you below. I never received a response from you regarding this email and the requests contained therein. As requested in Liza Ward's Oct. 24th letter, the State is also seeking Simmons' tax returns for 2006 and 2007.

Please advise by Friday, Jan. 16th whether you are willing to produce the complete financial statements described below and the tax returns. Unfortunately, if we do not hear from you by Friday, we will need to seek court intervention on this discovery.

Thank you,

**Claire Xidis** | Attorney at Law | Motley Rice LLC  
28 Bridgeside Blvd. | Mt. Pleasant, SC 29464 | [cxidis@motleyrice.com](mailto:cxidis@motleyrice.com)  
o. 843.216.9251 | c. 843.834.4747 | f. 843.216.9450

**From:** Xidis, Claire  
**Sent:** Wednesday, December 10, 2008 5:40 PM  
**To:** Vicki Bronson  
**Cc:** Ward, Liza  
**Subject:** RE: Oklahoma v. Tyson Foods, Inc. et al

Vicki -

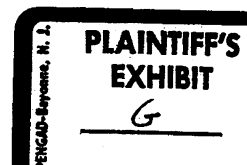
The balance sheets you produced on Monday are not complete financial statements and are missing key elements necessary to determine Simmons' financial condition. As I explained during our meet and confer a few weeks ago, we need financial information that set out income and that would enable us to get a complete understanding of Simmons' financial condition. Unfortunately, the balance sheets standing alone and do not provide key financial information.

I have attached the City of Tulsa order which addressed this issue for your review - please see p. 5-6. As you can see, it instructs the defendants to provide "financial statements." A financial statement includes a balance sheet, an income statement, and a statement of cash flow. These are the elements we need to understand the nature of Simmons' financial condition.

Also, two of the balance sheets you sent SIM AG 37107, 37109 state that "accompanying notes are an integral part of these combined financial statements." Please provide these notes which obviously impact the information set forth on the balance sheets.

Can you please provide this complete information for Simmons' as soon as possible?

2/13/2009



Thank you,

**Claire Xidis** | Attorney at Law | Motley Rice LLC  
28 Bridgeside Blvd. | Mt. Pleasant, SC 29464 | [cxidis@motleyrice.com](mailto:cxidis@motleyrice.com)  
o. 843.216.9251 | c. 843.834.4747 | f. 843.216.9450

**From:** Vicki Bronson [<mailto:vbronson@cwlaw.com>]  
**Sent:** Monday, December 08, 2008 3:46 PM  
**To:** Xidis, Claire  
**Cc:** Vicki Bronson  
**Subject:** Oklahoma v. Tyson Foods, Inc. et al

Claire,

See attached letter and documents SIM AG 37106 through SIM AG 37110.

Vicki Bronson  
Attorney at Law  
Conner & Winters, LLP  
211 E. Dickson St.  
Fayetteville, AR 72701  
(479) 582-5711  
(479) 587-1426 facsimile

IRS Circular 230 Notice: To ensure compliance with requirements imposed by the IRS, we inform you that, unless specifically indicated otherwise, any tax advice contained in this communication (including any attachment) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matter addressed herein.

*THIS MESSAGE AND ANY ATTACHMENTS MAY CONTAIN INFORMATION THAT IS HIGHLY CONFIDENTIAL, PRIVILEGED, AND EXEMPT FROM DISCLOSURE. ANY RECIPIENT OTHER THAN THE INTENDED RECIPIENT IS ADVISED THAT ANY DISSEMINATION, DISTRIBUTION, COPYING, OR OTHER USE OF THIS MESSAGE IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS MESSAGE IN ERROR, PLEASE DESTROY IT AND NOTIFY THE SENDER IMMEDIATELY.*

2/13/2009

UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

**FILED**

MAY 03 2002

Phil Lombardi, Clerk  
U.S. DISTRICT COURT

THE CITY OF TULSA, and THE TULSA  
METROPOLITAN UTILITY AUTHORITY, )

PLAINTIFFS, )

vs. )

CASE No. 01-CV-900-B (X)

TYSON FOODS, INC., COBB-  
VANTRESS, INC., PETERSON FARMS,  
INC., SIMMONS FOODS, INC., )  
CARGILL, INC., GEORGE'S, INC., )  
and CITY OF DECATUR, ARKANSAS, )

DEFENDANTS. )

**ORDER**

This order addresses the Plaintiffs' Motion to Compel [Dkt. 76] which has been referred to the undersigned United States Magistrate Judge for decision. This order also resolves Defendant Cargill, Inc.'s Motion for Protective Order [Dkt. 85] which has also been referred to the undersigned United States Magistrate Judge for decision. A hearing was held on these motions on May 1, 2002.

Plaintiffs' motion concerns four discovery requests while Defendant Cargill, Inc.'s motion for protective order addresses one of those requests by Plaintiff. At the Rule 37 conference, the Defendants agreed to provide responsive documents for all growers within the watershed since 1996. Plaintiffs reserved the right to move to compel responsive documents for earlier years. However, in the current motion to compel, Plaintiffs confine their request for relief to documents responsive for growers

96



within the watershed since 1996. The Court will address each of Plaintiffs' discovery requests in turn.

Plaintiffs' Request for Production No. 3:

At the hearing, Plaintiffs expressed concern that various objections interposed by the Defendants in their responses left uncertainty as to whether the Defendants had fully responded to the request. The Defendants responded that they had provided all responsive documents for all growers within the watershed since 1996, with the exception of Defendant Peterson Farms, Inc., which stated that it had provided summary information concerning all growers within the watershed since 1996, believing this to be in compliance with the agreements at the Rule 37 conference. Defendant Peterson Farms, Inc., stated that it could provide responsive documents for all growers within the watershed since 1996 within one week of the hearing.

Based upon the representations at the hearing and to remove any uncertainty on the issue, the Court grants the Plaintiffs' Motion to Compel and orders each of the Defendants to serve a supplemental response to Plaintiffs' Request for Production No. 3 within seven (7) days of the date of this order, which clearly states that the Defendant has produced all responsive documents for all growers within the watershed since 1996. Defendant Peterson Farms, Inc., is hereby ordered to produce the responsive documents along with his supplemental discovery response.

Plaintiffs' Request for Production No. 4:

With the exception of specific issues concerning Defendant Simmons Foods, Inc. and Cargill, Inc., the Defendants advised the Court at the hearing that they had

provided all documents responsive to Request for Production No. 4 for all of the growers within the watershed since 1996. For the same reasons discussed with respect to Request for Production No. 3, the Court orders the Defendants to serve a supplemental discovery response upon Plaintiffs stating that they have provided all documents responsive to Plaintiffs' document request No. 4 for all growers within the watershed since 1996. This supplement shall also be filed within seven (7) days of the date of this order.

Defendant Simmons Foods, Inc. objects to providing responsive documents concerning the terms of payment to the contract growers or the total payment amounts. Simmons contends that this information exceeds the scope of discovery, constitutes sensitive confidential proprietary business information of Simmons, especially in this competitive market when its competitors are co-defendants in this lawsuit and that the independent contract growers who are not parties to this litigation have a reasonable expectation of privacy with regard to these financial matters. After hearing Simmons' argument and reviewing the authorities cited, the Court is unpersuaded. The Court concludes that the amount of money paid to the contract growers is clearly within the scope of discovery under Fed. R. Civ. P. 26. The growers who received these financial payments are alleged by Plaintiffs to be the agents of the Defendants and the Plaintiffs contend that the payments are one aspect of the control which the Defendants have over the growers. The Court finds that the amount of those payments is certainly relevant to Plaintiffs' allegations in the discovery context.

Defendant Simmons' arguments concerning the confidential proprietary business nature of the information are adequately addressed by the protective order already in place in the case. This protective order likewise protects whatever privacy interests the growers have in this information. Defendant Simmons' objection is therefore overruled and Plaintiffs' Motion to Compel is granted with regard to this information. Defendant Simmons Foods, Inc. shall produce the responsive documents to Plaintiffs within seven (7) days of the date of this order.

Defendant Cargill, Inc. represented at the hearing that the responsive information has been provided to Plaintiffs in the form of reports and contract files with the exception of reports which will be produced within two weeks of the date of the hearing and some additional reports which are yet to be located but which will be produced upon being located. If the documents are not produced in a timely fashion, this issue shall be resolved by expedited telephone conference with the undersigned. Defendant Cargill also advised the Court that it had redacted the identity of the grower from various site reports which had been produced to Plaintiff. Defendant Cargill contends that the names were redacted to avoid embarrassment to the growers based upon adverse comments contained within the reports. The Court finds that this is an insufficient reason to redact the names of the growers and hereby orders Defendant Cargill, Inc. to produce unredacted site reports to Plaintiffs within seven (7) days of the date of this order.

Defendant Cargill also advised that it had redacted the social security numbers and bank account numbers from various files produced to the Plaintiffs. Plaintiffs did

not specifically object to this redaction and the Court at this stage concludes that this redaction may be appropriate. The Court, therefore, does not order Cargill to provide unredacted documents with social security and bank account numbers.

Based upon the above discussion, Plaintiffs Motion to Compel responses to Request for Production No. 4 are granted as set forth above.

Request for Production No. 26:

Through this request, Plaintiffs seek access to detailed financial information concerning each of the Defendants. In support of the request, Plaintiffs assert that such information will be relevant to Plaintiffs' punitive damage claim and also relevant to the economic feasibility of remedies which might be imposed in this case to correct the alleged problems claimed by Plaintiffs in their complaint.

Defendants argue that the simple filing of a punitive damage claim should not permit Plaintiffs unfettered access to their financial information especially since the Defendants are competitors and all but Defendant Tyson Foods, Inc. are privately held entities who do not disclose their financial information. Defendants suggest delaying this discovery until the Court rules on dispositive motions or even until trial.

From the briefs and authorities cited therein, along with the argument of counsel at the hearing, the Court is persuaded that some discovery of the Defendants' financial condition should be permitted. It is not a workable solution to await rulings on summary judgment motions or determinations during trial as to whether punitive damage instructions will be given before permitting discovery of the Defendants' financial conditions. That being said, Plaintiffs have not articulated sound reasons for

permitting detailed discovery of the Defendants' private financial affairs. Based upon Plaintiffs' arguments, it would appear that financial statements reflecting the Defendants' net worth from 1996 forward would be sufficient for the Plaintiffs' needs.

The Court therefore grants Plaintiffs' Motion to Compel to the extent that the Defendants are hereby ordered to produce to Plaintiffs within seven (7) days of the date of this order, documents reflecting their net worth from 1996 forward. This order is without prejudice to Plaintiffs' re-urging the motion should additional financial information be necessary as the case progresses.

Interrogatory No. 2:

By this interrogatory, Plaintiffs seek the identity of the Defendants' accountants and financial consultants. Based upon the Court's decision regarding production of financial documents, the Court concludes that Plaintiffs are not entitled to discover the identity of the Defendants' accountants or financial consultants at this stage in the litigation.

Conclusion

Plaintiffs' Motion To Compel Production of Documents [Dkt. 76] is GRANTED IN PART and DENIED IN PART as set forth above. Defendant Cargill, Inc.'s Motion for Protective Order [Dkt. 85] is GRANTED IN PART and DENIED IN PART as set forth above.

SO ORDERED this 3<sup>rd</sup> day of May, 2002.

  
FRANK H. McCARTHY  
UNITED STATES MAGISTRATE JUDGE



**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA,	)	
	)	
	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	No. 05-cv-329-GKF(PJC)
	)	
TYSON FOODS, INC., et al.,	)	
	)	
Defendants.	)	

**AFFIDAVIT OF DAVID R. PAYNE**

STATE OF OKLAHOMA      §  
   §  
COUNTY OF OKLAHOMA   §

Before me, the undersigned authority authorized to administer oaths in the State of Oklahoma, personally appeared David R. Payne. After being duly sworn, David R. Payne stated under oath as follows:

1. My name is David R. Payne. I am over eighteen years of age and have never been convicted of a felony. I am otherwise competent to testify under oath and to execute this affidavit. The facts stated herein are based upon my personal knowledge and are all true and correct.
  
2. I am a firm managing director of the firm of D.R. Payne & Associates, Inc. ("DRPA") and Business Valuers & Appraisers L.L.C. ("BVA") in Oklahoma City, Oklahoma. DRPA and BVA provide both forensic and financial consulting services in addition to opinions of value regarding businesses and their assets.
  
3. I am a certified public accountant, accredited senior appraiser, a certified turnaround professional and a certified insolvency and restructuring



advisor. I also hold two additional valuation designations. I regularly examine businesses and their assets, liabilities and operations to evaluate financial attributes affecting value liquidity and solvency, for purposes of assessing a business' ability to pay its obligations, commitments and liabilities.

4. DRPA has been retained by the Plaintiff in this action with respect to evaluating and assessing the financial condition and net worth of certain named defendant entities ("Defendants") as it impacts their ability to pay a claim, judgment or award of damage ("Ability To Pay"). Ability to Pay considers various financially oriented elements ("Financial Attributes") which include the nature, composition and quality of the Defendants' assets, liabilities, earnings and cash flows. The starting point for assessing the Financial Attributes affecting financial condition involves an evaluation of data as reported by the Defendants' in their books, records and financial statements ("Book Values"). Ability To Pay also considers true economic or intrinsic value ("Economic Value"), normalized earnings, and discretionary cash flows ("Earning Capacity") under the control of the managements for the Defendants.
5. Seven (7) of the Defendants are controlling parent entities and/or stand alone defendants ("Tier 1 Companies or Defendants") while six (6) Defendants are subsidiary companies ("Tier 2 Companies or Defendants") operating under the control of the Tier 1 Companies. The Tier 1 Companies generally report their financial results and file tax returns on a consolidated, to the extent there are any, basis which includes the Tier 2 Companies. Tier 1 Companies are normally required to undergo annual financial audits in order to meet registration, lending, management and/or shareholder requirements ("Stakeholder Requirements").
6. Annual financial audits of Tier 1 companies employ generally accepted accounting principles ("GAAP") which require that informative footnote disclosures be included with financial statements ("GAAP Statements"). In contrast, Tier 2 Companies may not be required to: (i) undergo separate, stand alone financial audits; (ii) keep their records on a GAAP basis; or (iii) provide separate footnote disclosures with their financial statements. Nevertheless, Tier 2 Companies' financial results, to the extent there are any, are subjected to audit procedures and are consolidated into the Tier 1 Companies' financial statements. The consolidated audit reports incorporate but do not segregate and delineate the financial results of any specific Tier 2 Defendant from other non-defendant entities under the Tier 1 Companies' consolidated control. Therefore, the financial statement data for Tier 2 Companies are readily available in the ordinary course from files utilized to conduct the annual audits.

7. GAAP Statements require informative footnote disclosures ("Footnote Disclosures") and have significantly more market based data when compared to: (i) financial statements prepared on another comprehensive basis of accounting ("OCBOA Statements"); and (ii) partial presentations (i.e. balance sheet only) of GAAP Statements ("Partial Presentation Statements"). Additionally, companies filing reports with the Securities and Exchange Commission ("SEC Registrants") pursuant to Regulations S-X and S-K provide further narrative disclosures of the business and its prospective outlook in text formats ("Text Disclosures").
8. Only two of the Defendants, (Tyson Foods, Inc. and Cal-Maine Foods, Inc.) are SEC Registrants who provide GAAP Statements, Footnote Disclosures and Text Disclosures. Based upon my training and experience with privately held companies similar to the remaining five (5) Tier 1 Companies (Cargill, Inc., George's, Inc., Peterson Farms, Inc., Simmons Foods, Inc. and Willow Brook Foods, Inc.), GAAP Statements and Footnote Disclosures are generally prepared and are available in the ordinary course of business due to Stakeholder Requirements. However, Cargill, Inc., George's, Inc., Peterson Farms, Inc. and Simmons Foods, Inc. have not provided a complete set of GAAP Statements with Footnote Disclosures. According to audited financial statements, the Footnote Disclosures are considered integral and relevant data. Audited financial statements of the Defendants include written references such as the following:

"The accompanying notes are an integral part of these financial statements"

(Source: Willow Brook and/or Simmons  
12/31/06 Audited Financial Statements)

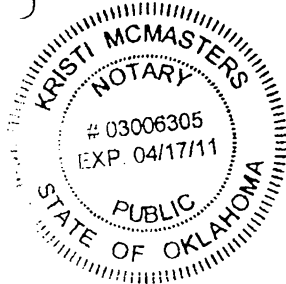
Additionally, none of the Tier 1 Defendants except for the two SEC Registrants have provided complete sets of current 2008 unaudited financial statements and data which should be available from their December 2008 records pursuant to meeting their Stakeholder Requirements. Willow Brook Foods, Inc. and Simmons Foods, Inc. only provided October 2008 balance sheets. George's Inc. provided a compiled income statement and balance sheet for August 2008.

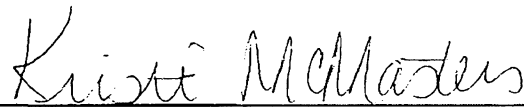
9. The Tier 2 Defendants have provided only limited and selected financial information which is categorized as Partial Presentation Statements. The Tier 2 Defendants have not provided complete sets of financial statement documents whether prepared on a GAAP basis or OCBOA basis. The Tier 2 Defendants have not provided any Footnote Disclosures or data commonly incorporated into Footnote Disclosures. At a minimum, the data incorporated for a Tier 2 Defendant into a Tier 1 Defendants' GAAP Statements and Footnote Disclosures has to exist in order for such audit reports to be issued (on an unqualified basis). All of the aforementioned data including working trial balances and/or subsidiary financial statements is commonly referred to as "consolidating financial statement" data ("Consolidating Data").
10. Finally, GAAP and/or OCBOA Statements report tax assets and/or obligations and tax expense and/or benefits which utilize and rely upon data from filed tax returns ("Tax Data").
11. The aforementioned GAAP Statements, Footnote Disclosures, Consolidating Data and Tax Data are also relevant to evaluating the financial condition, net worth and/or Ability To Pay of the Defendants. A summary of the data either produced or not produced pursuant to the Plaintiff's Requests for Production No. 107 and 11 (as supplemented on October 24, 2008 letter) is included on **Appendix A**.

Further, Affiant sayeth not.

  
DAVID R. PAYNE

SUBSCRIBED AND SWORN TO BEFORE ME on this 17<sup>th</sup> day of February, 2009, to certify which witness my hand and official seal.



  
Notary Public in and for  
The State of Oklahoma

## Appendix A

Tier	Defendant Classification	Full Presentations Statements		Partial Presentation Statements		Consolidating Data	
		Text Disclosures (10-k)	GAAP Disclosures (Audit Statements)	GAAP Disclosures (Audit Statements)	OCBA Disclosures (Internal Statements)	Tax Disclosures (Tax Returns)	Other Disclosures (W/TB, Plans, Projections, Budgets)
1	1a. Tyson Foods, Inc.	9-08	9-08	N/A	N/A	N/D	N/D
2	1b. Tyson Poultry, Inc.	N/A	N/D	N/D	N/D	9/2007-10/2005 <sup>2</sup>	N/D
2	1c. Tyson Chicken, Inc.	N/A	N/D	N/D	N/D	9/2007-10/2005 <sup>2</sup>	N/D
2	1d. Cobb-Vantress, Inc.	N/A	N/D	N/D	N/D	9/2007-10/2005 <sup>2</sup>	N/D
1	2a. Cal-Maine Foods, Inc.	5-08	5-08	N/A	N/A	N/D	N/D
2	2b. Cal-Maine Farms	N/A	N/D	N/D	N/D	N/D	N/D
1	3a. Cargill, Inc.	N/A	N/D	(Financial Summary - 2004) <sup>1</sup>	N/D	N/D	Asset Purchase Agreement (3)
2	3b. Cargill Turkey Production, LLC	N/A	N/D	(Financial Summary - 2004) <sup>1</sup>	N/D	N/D	N/D
1	4a. George's Inc.	N/A	N/D	N/D	BS and IS Only (8/08- 9/05) without disclosures	N/D	N/D
2	4b. George's Farms, Inc.	N/A	N/D	N/D	BS and IS Only (8/08- 9/05) without disclosures	N/D	N/D
1	5. Peterson Farms, Inc.	N/A	N/D	N/D	BS Only (9/07-9/04); Comparative BS (08/06) without disclosures	N/D	N/D
1	6. Simmons Foods, Inc.	N/A	N/D	Balance Sheet Only (10/08, 12/07-12/03) without disclosures	N/D	N/D	N/D
1	7. Willow Brook Foods, Inc.	N/A	N/D	Balance Sheet and Income Statement (10/08-12/03) without disclosures	N/D	N/D	Asset Purchase Agreement (3)

N/D- No Disclosure

N/A- Not Applicable

WTB - Working Trial Balance

BS - Balance Sheet

IS - Income Statement

(1) Provided a typed summary of selected but incomplete data extracted from the audit statements.

(2) Balance Sheet only; omits disclosure of full tax return.

(3) Asset Purchase Agreement between Cargill and Willowbrook contains redacted portions.

David Payne

Report

See In Camera Production

